PP

v.

MUTHU SUBRAMANIAM SEENISERVAI

HIGH COURT MALAYA, IPOH
SU GEOK YIAM JC
[CRIMINAL TRIAL NO: 45-4-2000]
26 JULY 2001

CRIMINAL PROCEDURE: *Sentence - Adequacy of sentence - Culpable homicide not amounting to murder - Penal Code, s. 304(b) - Mitigating factors - Public interest and interests of accused - To strike a balance of - Whether accused should be made a scapegoat for others due to crime becoming rampant - Facts and circumstances of each case considered*

The accused in this case pleaded guilty when the charge was reduced from one of murder under s. 302 of the Penal Code to one of culpable homicide not amounting to murder under the second limb of s. 304 of the Penal Code. Upon conviction the punishment provided was imprisonment not exceeding ten years or fine or both. The facts showed that the deceased had hit the bonnet of the accused's car and a quarrel ensued between them. This led to a struggle where the accused had stabbed the victim. In view of the circumstances and mitigating factors, *ie,* that the accused is a first offender, and that he had committed the act out of self-defence, the learned defence counsel prayed for a lenient sentence be imposed on the accused to induce him to turn over a new leaf and in order to enable the accused to return to his family and to society.

Held:

[1] The first and foremost consideration which guides the court in deciding the appropriate sentence is public interest. Public interest is best served if the offender is induced to turn away from criminal ways. The correct approach for the court to take is to strike a balance as far as possible between the interests of the public and the interests of the accused.

[2] Here a life has been taken. The perpetrator must be punished and the punishment must reflect the seriousness of the crime. At the same time, the perpetrator should not be punished more severely just because there are others who have committed acts of violence. The accused should not be made a scapegoat for others just because crime has become more rampant in our country. Each case must be viewed from its particular facts and circumstances.

[3] Since the accused had pleaded guilty thereby saving the court's time and public expense and to show his remorse and he has also through his counsel expressed his desire to turn over a new leaf the court will impose upon him a sentence which will serve the public interests and at the same time allow the accused to return to his family and to society and to contribute usefully to both his family and society.

[Accused sentenced to 2 1/2 years imprisonment with effect from date of arrest.]

Case(s) referred to:
Abdul Karim v. Regina [1954] 20 MLJ 86 ***(refd)***
Jayaraman & Ors v. PP [1982] 2 MLJ 273 ***(refd)***
Melvani v. PP [1971] 1 MLJ 137 ***(refd)***
PP v Ooi Wang San [1998] 3 CLJ 270 ***(refd)***
PP v. Doraigunaraju Krishnan [1993] 3 CLJ 664 ***(refd)***
PP v. Halim Din [1999] 4 CLJ 15 ***(refd)***
PP v. Loo Choon Fatt [1976] 2 MLJ 256 ***(refd)***
PP v. Mansor Md Rashid & Anor [1996] MLJ U 445 ***(refd)***
PP v. Ravindran & Ors [1993] 1 MLJ 45 ***(refd)***

Legislation referred to:
Penal Code, ss. 302, 304(b)

For the pp - Abdul Rahim Mohd Nor; DPP
For the lawyer - Harjeet Singh Sidhu; M/s PS Sohanpal & Sidhu

Reported by Suhainah Wahiduddin

JUDGMENT

Su Geok Yiam JC:

The offence with which the accused has been found guilty of and with which he has been convicted, ie causing death with the knowledge that the act is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death, is a serious offence. The punishment provided for in s. 304(b) of the Penal Code is imprisonment not exceeding ten years or fine or both.

Harjeet Singh Sidhu, the learned defence counsel, has realistically conceded that in this case a prison sentence is inevitable. However, in view of the facts and circumstances of this case and the mitigating factors, he prays that a lenient sentence be imposed on the accused to induce him to turn over a new leaf and in order to enable the accused to return to his family and to society and be a good citizen. He has cited several cases in support thereof *viz Melvani*

v. PP [1971] 1 MLJ 137; *Abdul Karim v. Regina* [1954] 20 MLJ 86; *PP v. Mansor Md Rashid & Anor* [1996] MLJ U 445; *PP v. Ravindran & Ors* [1993] 1 MLJ 45; *PP v Ooi Wang San* [1998] 3 CLJ 270; *Jayaraman & Ors v. PP* [1982] 2 MLJ 273; *PP v. Doraigunaraju Krishnan* [1993] 3 CLJ 664; *PP v. Halim Din* [1999] 4 CLJ 15.

He has placed much emphasis on the following:

1. the accused is a 1st offender;

2. the accused has pleaded guilty the moment the charge was reduced from one of murder under s. 302 of the Penal Code to one of culpable homicide not amounting to murder under s. 304 second limb of the Penal Code. He has done so although the 12th prosecution witness was not helpful to the prosecution and although the accused has a good defence to the reduced charge, ie the right of self-defence;

3. the accused was aged 26 years old at the time of commission of the offence and is now aged 28 years old;

4. he is the youngest of six siblings.

5. he lost his father when he was young and was brought up by his mother;

6. he has an aged mother, a wife and a small child, who was born after his arrest in connection with this case and who is now aged two years, to support and they experience financial hardship because of his remand;

7. he was gainfully employed before he was arrested in connection with this case;

8. it is stated in the facts, p. 30, which the accused has admitted, that the accused stabbed the deceased during a struggle;

9. according to the accused what had happened was that the deceased had hit the bonnet of his car causing the accused to get out from his car. A quarrel ensued between the accused and the deceased which led to a struggle between the two of them. It was during the struggle that the accused stabbed the deceased in self-defence;

10. the accused's version is supported by the evidence of the specialist, PW1, who said that the injury which caused the deceased's death could have been suffered by the deceased or inflicted upon the deceased when the deceased was attempting to stab others;

11. justice should be tempered with mercy; and

12. the accused should not be made a scapegoat for others.

Abdul Rahim Mohd Nor, the learned DPP, who represents the public prosecutor, the legal custodian of the public interest, has prayed for an appropriate sentence citing the case of *PP v. Loo Choon Fatt* [1976] 2 MLJ 256.

He says 12 witnesses have already testified before the charge was reduced to one under s. 304(b) of the Penal Code.

He confirms that the accused is a 1st offender.

He submits that the public interest is the overriding factor in sentencing and that the court has to strike a balance between the interest of the public and the interest of the accused when deciding what is an appropriate sentence to be imposed in this case.

He has conceded that the specialist, PW1, has testified that the single stab wound on the left side of the deceased's neck which is 7.7 cm deep and reaching the bone and which caused the death of the deceased could have been inflicted when the deceased was attempting to defend himself or when the deceased was attempting to stab others.

Nevertheless he adds that offences involving violence have become rampant in our country.

Before passing sentence the court has considered the submissions of the learned DPP and the learned defence counsel, the cases cited by both of them and the facts and circumstances of this case.

As Parliament has not fixed the punishment for the offence which has been committed by the accused, the court is mindful of its right and duty to be lenient or severe when imposing sentence on the accused. The court is also mindful that the first and foremost consideration which guides the court in deciding the appropriate sentence is the public interest. It has often been said that the public interest is best served if the offender is induced to turn away from criminal ways. The correct approach for the court to take is to strike a balance as far as possible between the interests of the public and the interests of the accused.

Here it is clear that the deceased's parents have lost a son and the deceased's family have lost a loved one. The society has also lost one of its members. A life has been taken. The perpetrator must be punished and the punishment

must reflect the seriouness of the crime. At the same time the perpetrator should not be punished more severely just because there are others who have committed acts of violence.

As what Harjeet Singh Sidhu has rightly pointed out the accused should not be made a scapegoat for others just because crime has become more rampant in our country. Each case must be viewed from its particular facts and circumstances. Each crime and each criminal must be treated separately and differently if the facts and circumstances should warrant such treatment.

The court is in no doubt that the whole incident will continue to haunt the accused and the members of his family for the rest of their lives, especially so, since the accused has become a father after the incident. He will now understand the pain and anguish suffered by the deceased's family each time he looks at his son. That is another form of punishment for him.

If the accused had not pleaded guilty to the reduced charge and the trial had proceeded on and at its conclusion the accused had been found guilty by the court and convicted the court would have sentenced him to four years imprisonment. However since he has pleaded guilty thereby saving the court's time and public expense and to show his remorse and he has also through his counsel expressed his desire to turn over a new leaf the court will impose upon him a sentence which will serve the public interests and at the same time allow the accused to return to his family and to society and to contribute usefully to both his family and the society.

The court hereby sentences the accused to 2 1/2 years imprisonment with effect from the date of the accused's arrest, ie 29 July 1999.

All documentary exhibits to the charge sheet. All other exhibits to the police for disposal.